

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 01-CR-80845

vs.

HON. GEORGE CARAM STEEH

LEO PRESTON,

Defendant.

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ORDER DENYING CERTIFICATE OF APPEALABILITY ON REMAND

On August 30, 2007, the court entered an order denying defendant Leo Preston's Rule 60(b)(4) motion for relief from his July 16, 2002 plea-based conviction for possession with intent to distribute five kilograms or more of cocaine, 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(2), and his October 23, 2002 sentence of 120 months imprisonment. The court found the motion to be untimely, and rejected Preston's argument that the court lacked jurisdiction over the drug charge. See United States v. Scales, 464 F.2d 371, 375 (6th Cir. 1972). Preston appealed, and on March 6, 2008, a panel of the Sixth Circuit remanded to this court for the sole purpose of determining whether to grant or deny a certificate of appealability. See United States v. Hardin, 481 F.3d 924, 926 (6th Cir. 2007) (holding that a movant for relief from judgment under Rule 60(b) must obtain a certificate of appealability under 28 U.S.C. §2253 before his appeal of the denial of the motion can be heard).

A certificate of appealability may issue "only if the applicant has made a

substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2).  
Preston has made no such showing. Accordingly, a CERTIFICATE OF  
APPEALABILITY is hereby DENIED.

SO ORDERED.

Dated: March 11, 2008

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on  
March 11, 2008, by electronic and/or ordinary mail.

s/Josephine Chaffee  
Deputy Clerk